

AG Contract No : KR 05-0140TRN
ADOT ECS File No.: JPA 04-124
Project: SR 277 Culverts
Section: MP 334.5
TRACS No.: H6717 01C (District Minor Fund)
Budget Source Item No.: 73305

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF SNOWFLAKE

THIS AGREEMENT is entered into 29th March, 2005, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF SNOWFLAKE, ARIZONA, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The State and the Town are in mutual agreement to participate in the construction of culverts on State Route (SR) 277 at approximate milepost (MP) 334.5 to include a pre-cast box culvert and a Corrugated Metal Pipe (CMP), hereinafter referred to as the "Project", for the safety and benefit of the traveling public. Both parties agree that the Town will be the lead agency to design and construct the Project and the State will provide a one-time lump sum funding, in an amount not to exceed \$300,000.00 to the Project. The responsibility of each of the parties is defined in this Agreement under Section II. Scope of Work.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27437
Filed with the Secretary of State
Date Filed: 03/29/05

Genice K. Brewer
Secretary of State

By: Dwight D. Brennwald

II. SCOPE OF WORK

1. The Town shall:

a. Upon execution of this Agreement and award of the Project to one or more construction contractor(s), provide the State documentation showing the Project has been awarded and an invoice for the State's share of the Project, a one-time lump sum amount, not to exceed \$300,000.00 which includes design, construction and design/construction engineering and administration costs for the Project.

b. Prepare to State standard, design plans, technical design, specifications and other such contract documents and services required for construction bidding and construction of the Project. Incorporate or resolve State's review comments as appropriate.

c. Be responsible to provide hydrologic and hydraulic design to State for review and comment. Such design will demonstrate that i) no adverse drainage impacts will occur up-stream and down-stream of the culvert crossings; ii) the design does not prohibit or negatively impact the State's ability to widen or improve SR 277 in the future; and iii) no negative impacts will result to the current outfall condition into Cottonwood Wash. The Town shall hereby acknowledge that the State will not accept the Project without prior review and approval of aforementioned design.

d. Call for bids, and with the concurrence of the State, award one or more construction contract(s) to accomplish the Project. Administer the same and make all payments to the contractor(s).

e. Be responsible to obtain the concurrence of the State on any Project related construction contract modifications.

f. Be responsible for contractor claims for extra compensation due to delays or whatever reason, except delays caused by the State, any of its departments, agencies, officers and employees.

g. Be responsible for all costs associated with the Project over and above State's share of \$300,000.00.

h. Upon completion of the Project and with the concurrence of the State, approve and accept the Project as complete and provide perpetual and proper maintenance to the Project outside the State's right-of-way.

i. Be responsible to obtain the required "Blanket Encroachment Permit" through the State's Globe District Permit Office for all planned maintenance work within the State's right-of-way.

j. Be responsible for any Conditional Letter of Map Revision (CLOMR) and/or Letter of Map Revision (LOMR) required by FEMA regulation as a result of the Project.

2. The State shall:

a. Upon execution of this Agreement and receipt from the Town of an approval of the awarded contract documentation for the Project, remit to the Town for its share of the Project, a one-time lump sum amount not to exceed \$300,000.00.

b. Review the design documents required for construction of the Project, and provide comments to the Town as appropriate.

c. Upon completion and acceptance of the Project by the Town, provide perpetual and proper maintenance to the Project inside the State's right-of-way

III. MISCELLANEOUS PROVISIONS

1. The Town assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims of the entire drainage system and improvements. In regard to the improvements contemplated by this Agreement, the Town shall require its contractors to name the State and Arizona Department of Transportation (ADOT) as an additional insured in the contractor's policies. The Town shall also require its contractors to name the State and ADOT as an additional indemnitee in the Town's contracts with its contractors. It is understood and agreed that the State is held harmless in perpetuity for all drainage impacts up-stream and down-stream of the Project crossing and any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the said Project and related reimbursements and/or payments; provided herein. However, any provisions for the State to be held harmless and indemnified by the Town and for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon sixty (60) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain the said Project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. The Town will also record its set of this Agreement with the Navajo County Recorder's Office.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes, § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9 In the event of any controversy, which may arise out of this Agreement, the parties hereby agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10 All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

Town of Snowflake
Town Manager
81 W. 1st South
Snowflake, AZ 85937

Globe District Permit Office:

Globe District
ATTN: Permits
P O. Box 2717
Globe, AZ 85501
TEL: (928) 425 7638
FAX: (928) 425 0468

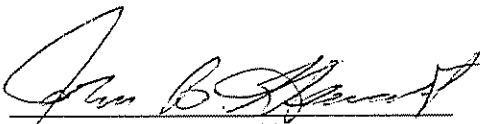
11. Pursuant to Arizona revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF SNOWFLAKE

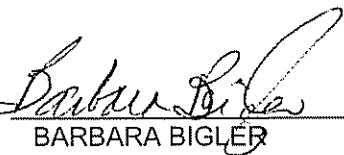
STATE OF ARIZONA

Department of Transportation

By 
JOHN B. STEWART
Mayor

By 
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTEST

By 
BARBARA BIGLER
Town Clerk

RESOLUTION NO. 05-462

A RESOLUTION APPROVING THE TERMS AND CONDITIONS OF THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION THROUGH THE INTERMODAL TRANSPORTATION DIVISION & THE TOWN OF SNOWFLAKE, ARIZONA FOR THE PURPOSE OF IMPROVEMENTS ON STATE ROUTE (SR) 277 AT APPROXIMATE MILEPOST (MP) 334.5

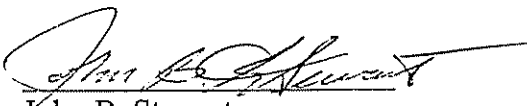
WHEREAS, the Town of Snowflake and the State of Arizona have agreed to participate in the construction of culverts on State Route (SR) 277 at approximate milepost (MP) 334.5 to include a pre-cast box culvert and a Corrugated Metal Pipe (CMP) hereinafter referred to as the "Project" for the safety and benefit of the traveling public; and

WHEREAS, the Town of Snowflake and the State of Arizona are in mutual agreement that the Town will be the lead agency to design and construct the Project; and

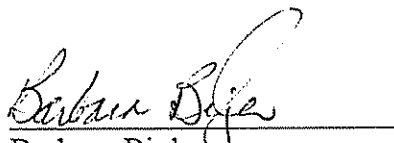
WHEREAS, the State of Arizona will provide a one-time lump sum funding, in an amount not to exceed \$300,000.00 to the Project.

THEREFORE, LET IT BE RESOLVED by the Mayor and Town Council of the Town of Snowflake, Arizona that the Town of Snowflake enter into and accept the conditions and terms of the "Intergovernmental Agreement between the State of Arizona and the Town of Snowflake" and that the Mayor is authorized to execute said Intergovernmental Agreement on behalf of the Town of Snowflake.

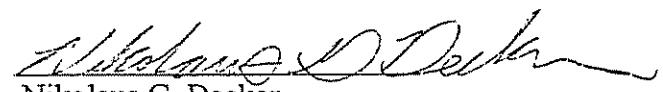
PASSED & ADOPTED BY THE MAYOR AND TOWN COUNCIL OF SNOWFLAKE, NAVAJO COUNTY, ARIZONA on this 8th day of March 2005.


John B. Stewart
Mayor

ATTEST:


Barbara Bigler
Town Clerk

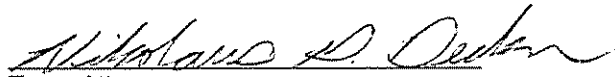
APPROVED AS TO FORM:

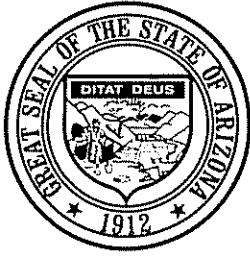

Nikolaus G. Decker
Town Attorney

APPROVAL OF THE TOWN OF SNOWFLAKE ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF SNOWFLAKE, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 8th day of March, 2005.


Town Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0140RN (**JPA 04-124**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED March 24th, 2005.

TERRY GODDARD
Attorney General


JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section